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CONSTITUTION OF THE LEAGUE OF NATIONS.

The text of the plan for the League of Nations was presented to the Peace Conference at Paris after the unanimous report of the Commission appointed to formulate it, consisting of representatives of fourteen nations. These nations were the United States of America, Great Britain, France, Italy, Japan, Belgium, Brazil, China, Czecho-Slovakia, Greece, Poland, Portugal, Roumania and Serbia. Lord Robert Cecil, who represented Great Britain, said:

"It seems to me a great omen for the great project in which we are engaged that before its final completion it should have been published to the world and laid before all its people for its service and their criticism."

And M. Leon Bourgeois, the representative of France, said:

"Lord Robert Cecil has said we now present to the Conference and to the world the result of our work, but we do not present it as something that is final, but only as the result of an honest effort to be discussed and to be examined not only by this Conference, but the public opinion of the world."

And he, himself, in his presentation speech proposed two amendments, declaring that it was "the sincere wish of France to see that the great pact becomes, possibly with some improvement on the two points I have mentioned, the law of nations."

It is thus apparent that the draft presented to the Conference was necessarily tentative, and its sponsors invited general discussion and criticism. In view of this fact no hasty condemnation should be visited upon those who approach the subject in a proper spirit, and it must be admitted that though the debates in the United States Senate have not all been conducted with philosophic calm and constructive purpose, they have nevertheless been of value in enabling the world to reach a just conclusion. . . Such of these speeches as have been animated chiefly by personal venom and partisan purposes will have no more influence than they deserve on the American public and will receive no attention in the world at large. They are easily placed at their true valuation. They have already been weighed in the

balances and found wanting in any element of enlightenment upon the great issues at stake.

The Articles of Confederation of the United States of America were drawn by a committee consisting of one member of each of the original thirteen colonies appointed by resolution of Congress June 12, 1776. Seventeen months intervened and on November 15, 1777, the final draft was adopted with amendments after debate, and ordered to be submitted for ratification by the colonies. It is interesting to recall that the title was "Articles of Confederation and Perpetual Union," and that article 2 expressly reserved to each state "its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this Constitution expressly delegated to the United States in Congress assembled." It soon became apparent that too much "sovereignty" had been reserved, and that a "more perfect union" was necessary. And it was out of these conditions that the Constitution of the United States was formulated, engrossed, and signed on September 17, 1787, after debates extending through nearly four months by the convention that met in Philadelphia on May 25, 1787, over which George Washington presided. And on September 25, 1789, ten amendments to this Constitution were proposed by the first Congress for adoption by the legislatures of the several states. These facts afford striking illustration of the difficulties that necessarily attend the making of written constitutions and give warning that perfection is not to be expected in any original or hasty draft. They also admonish us that the whole is not to be rejected because all its parts do not conform to all desires.

PREAMBLE.

The proposed Constitution of the League of Nations sets forth a twofold design in its Preamble: (1) To promote international coöperation and (2) To secure international peace. The thought of the world is thus distinctly challenged by its first sentence. Are we ready for international coöperation, and do we desire international peace? No voice will dissent from the universal demand for peace, and no voice can now stay the insistent demand for coöperation. One has become as essential

as the other. Every part of the world has been brought so close, by miracles of invention, to every other part that there must be international coöperation or fatal friction constantly bursting into flames of destructive war. Some say that the Covenant embraces too much, but its friends submit with convincing reason that if it undertook less it would accomplish nothing. The writer offers but one suggestion as to the Preamble based upon the fact that there is no illusion to Deity in any portion of the instrument. True, its date is to fixed by the calendar beginning at the birth of the Prince of Peace, but something more would seem to be appropriate. No land has ever been discovered without its God, no people without some recognition of a Higher Power. German atheism and German infidelity had no small part in bringing on the German World War. Therefore, to avoid any suspicion of this taint in this great document, some phrase should be added to the Preamble containing this thought:

“Invoking the Ruler of the Universe, Maker of all things, Judge of all men, to lift up His countenance upon us and give us enduring peace.”

ARTICLE I.

Improvement can be made in Article I, without altering its meaning or effect, by the omission of some words; and an addition should be made to include other agencies, besides the Executive Council and the Secretariat, through whose instrumentality the high contracting parties are to act. For an analysis of the document shows these agencies: 1. The Body of Delegates. 2. The Executive Council. 3. The Secretary General. 4. Special Committees of Investigation. 5. A Permanent Secretariat. 6. A Permanent Commission on National Armaments. 7. A Permanent Commission on National Munitions. 8. A Court of Arbitration. 9. A Permanent Court of International Justice. 10. Mandatories. 11. A Mandatory Commission. 12. A Permanent Bureau of Labor. 13. All International Bureaus. It would be well also in this initial Article to make it plain, beyond all possibility of dispute, that the League of Nations shall have no jurisdiction over the domestic affairs of any State, and that it shall not operate in any way to affect the Monroe Doctrine. All its spokesmen have declared that there is

nothing in the instrument affecting these questions, and since that is so let it be plainly and expressly stated on the face of the paper. Therefore Article I should read:

"The action of the high contracting parties under the terms of this covenant shall be effected through the instrumentality of a Body of Delegates representing the high contracting parties, an Executive Council, a permanent international secretariat, and such other agencies as are hereinafter provided by this Constitution. But no such action shall extend to the internal affairs of any State nor abrogate the Monroe Doctrine of the United States."

ARTICLE II.

We have only one suggestion to make with regard to this article. It refers to the Body of Delegates, but the last word of the last sentence is "representatives." This should be substituted by the word "*delegates*."

ARTICLE III.

This article deals with the Executive Council, which is to be composed of representatives of the United States, the British Empire, France, Italy and Japan, together with representatives of four other States, members of the League. It has been commonly said that the Council will consist of nine representatives. But there is nothing in the article to make this clear. The first sentence of the article should therefore be changed to read as follows:

"The Executive Council shall consist of nine representatives, of whom the United States of America, the British Empire, France, Italy and Japan, shall each choose or appoint one, the remaining four to be chosen or appointed by other States, members of the League."

ARTICLE IV.

This article deals with manners of procedure in the Body of Delegates and Executive Council, and would be clarified by a slight addition to the first sentence shown in italics as follows:

"All matters of procedure at meetings of the body of delegates or the Executive Council, including the appointment of committees to investigate particular matters, shall be

regulated by the body of delegates or the Executive Council, *each for itself*, and may be decided by a majority of the States represented at the meeting."

ARTICLE V.

No objections appear to have been made to Article V by anyone.

ARTICLE VI.

There is one suggestion with reference to this Article, which concerns "representatives of the high contracting parties and officials of the League." Some have asked what distinction is made in the instrument between the "high contracting parties" and the "League." If there be any confusion on this subject, it seems to be superficial. There is a necessary distinction which should be patent to all. The high contracting parties form the League, but they do not lose their identity in doing so, nor do they surrender their entire sovereignty to the League. Something of sovereignty is surrendered by every pact or treaty among nations, as something of individual liberty is surrendered by every person who becomes a member of organized society. One has not the same personal liberty in populous communities as in the forest or on the plains; and still more is surrendered in crowded cities. The same thing is true of nations under modern conditions of quick transportation and immediate intercommunication. The distinction in Article VI between "representatives of the high contracting parties" and "officials of the League," is evidently only a distinction between different agencies of the League, "representatives" referring to the Body of Delegates and Executive Council, as preceding articles indicate, and "officials" referring to the Secretary General and other agencies of the League. But in conformity with previous suggestions and to make this section clearer, it should read as follows:

"Delegates and representatives of the high contracting parties and officials of the League, when engaged in the business of the League, shall enjoy diplomatic privileges and immunities, and the buildings occupied by the League and its officials, or by *delegates and* representatives attending its meetings, shall enjoy the benefits of extra-territoriality."

ARTICLE VII.

In the senatorial debates, criticisms have been made of Article VII which would all be answered by the change of punctuation. The comma after States in the first line should be stricken out and inserted after League, so that the sentence will read :

“Admission to the League, of States not signatories to the covenant and not named in the protocol hereto as States to be invited to adhere to the covenant, requires the assent of not less than two-thirds of the States represented in the body of delegates, and shall be limited to fully self-governing countries, including dominions and colonies.”

Solemn and critical Senators were confused by the reading, “Admission to the League of States, not signatories to the covenant.” This is nonsense, and the wonder is that the learned Senators did not perceive it to be the fault of a misplaced comma.

ARTICLE VIII.

Much hot air has been used in an attempt to blow up the whole Constitution on account of supposed powers granted the Executive Council by Article VIII. The misconception of unfriendly critics plainly appears upon consideration of the second sentence in the article, italics ours :

“The Executive Council shall also determine *for the consideration and action of the several Governments* what military equipment and armament is fair and reasonable in portion to the scale of forces laid down in the program of disarmament; and these limits, when adopted, shall not be exceeded without the permission of the Executive Council.”

It is thus plain that the Executive Council has in this respect only suggestive functions, and that there is no compulsion upon any Government to adopt its suggestion. One wonders, however, why the word “Governments” is here used, while everywhere else in the instrument the word “States” is used. It is a small matter, but for the sake of uniformity, it would be better to substitute here States for Governments. Attention is called to the fact that the sentence quoted is one of the provisions of the instrument which indicates that action of the Executive Council may under some circumstances, be authoritative or fi-

nal; but even here there is no element of finality about it until adopted by the several States; and though it may have been so adopted, the language clearly shows that it is not intended to be unalterable.

ARTICLE IX.

Criticisms of Article IX relate to the fact that it does not stipulate how the permanent commission on military and naval questions shall be constituted. But Article IV would seem to settle the difficulty.

ARTICLE X.

Some have declared Article X to be the most dangerous of the Covenant, and many attacks have been made on it by those who predict that it will require us to take part in every war against any nation of the earth. The fallacy of this view is shown by the express language of the article which confines itself to external aggressions against members of the League. And when we remember that this organization will be the preponderating power of the world, the probability of such aggressions is perceived to be small. The League will be not a mere "balance of power" but the overwhelming power of the world. Therein lies its virtue and thence is derived its value as a guaranty of peace among all nations. For no nation will be able to resist its moral and economic weight, and its military force will rarely if ever have to be exerted. The mere existence of the League will tend to insure peace. Nor is there anything in the criticism that the Executive Committee can order us to war under this article. For here again the powers of the Executive Committee are simply and wholly advisory by the express terms of the instrument. And it may here be remarked, once for all, that there is nothing in the whole instrument to deprive Congress of its Constitutional powers to declare war, to raise and support armies, to provide and maintain a navy, to make rules for the government and regulation of our land and naval forces, and to raise revenue and make appropriations therefor. Other violent attacks have been made on this Article, which are seen to be no more substantial than vanishing mists when the word "external" is given its proper significance. It has been argued that the article will put the world in a straight jacket or plaster cast as it

now stands, denying all hope of further development or betterment, and making the League of Nations a guarantor for all time of whatever oppressions may be wreaked on peoples struggling towards greater freedom. Not so. The whole argument is annulled by the word "external." And the dark pictures of hopeless gloom sink out of sight into the abyss whence they were conjured, or vanish in a blaze when touched by Ithuriel's spear.

ARTICLE XI.

Tremendous guns have been trained on Article XI. Its first paragraph, however, is one of the answers to the criticism that sovereignty is surrendered by the States. Here the essential distinction between "the high contracting parties" and the "League" appears in the reservation by the former of "the right to take any action that may be deemed wise and effectual" by them "to safeguard the peace of nations." Observe that there is nothing here to indicate that there shall be any compulsion upon any of the high contracting powers, but each and all reserves the right to take any action that may be deemed wise and effectual to safeguard peace. This is the only instance in which the word "reserve" is used in the Covenant, and it does not appear here by accident but by deliberate design. The reservation is full and complete to the high contracting parties, and leaves each one of them free to determine its own course. Thus none of the high contracting parties can be forced into war under this article against its will. The critics who hold otherwise have overlooked the necessary meaning and effect of the word "reserve" in connection with "the high contracting parties." But we agree that the second paragraph of this article might well be amended by an express provision reserving the right of every nation to regulate its domestic affairs. The amendment we suggest is shown by italics, as follows:

"It is hereby also declared and agreed to be the friendly right of each of the high contracting parties to draw the attention of the body of delegates or of the Executive Council to any circumstance, *not arising from the right of any nation to regulate its internal affairs*, affecting international intercourse which threaten to disturb international peace or the good understanding between nations upon which peace depends."

This amendment repeats the safeguard already suggested by amendment to Article I.

ARTICLE XII.

The fulminations against Article XII have been intense. It has been one of the chief points of attack. It is often impossible to satisfy a man with blood in his eye, but reasonable critics will have their difficulties removed, we believe, by amendments not so serious after all. In the first place, for the sake of consistency, the word "recommendation" should be substituted by the word "report," and we suggest that the whole article should read as follows, amendments being indicated by italics:

"The high contracting parties agree that should disputes arise between them which cannot be adjusted by the ordinary processes of diplomacy they will in no cases resort to war without previously submitting the questions and matters involved either to arbitration or to inquiry by the Executive Council, *in accordance with the provisions of Article XV*, and until three months after the award by the arbitrators or a *report* by the Executive Council, *after inquiry made as aforesaid*, and that they will not even then resort to war as against a member of the League which complies with the award of the arbitrators or the *report* of the Executive Council.

"In any case under this article the award of the arbitrators shall be made within a reasonable time, and the *report* of the Executive Council shall be made within six months after the submission of the dispute."

These amendments, by requiring the report of the Executive Council to be unanimous, as it must be under Article XV, will draw the teeth of prominent objectors and may possibly ease their pain sufficiently to give them peace and incline them to hand on the boon to a stricken world.

ARTICLE XIII.

Arbitration is the subject of Article XIII, and this is one of the few articles which has excited practically no strife in the proposed Peace Constitution.

ARTICLE XIV.

A permanent court of international justice is provided by Article XIV, which has not seemed yet to be a red flag to any rampant bull.

ARTICLE XV.

The most intelligent criticisms of Article XV can be answered by two simple amendments. Here occur the words, "any dispute likely to lead to rupture." A different expression is used in Article XII and XIII, and no sufficient reason appears for a departure from that usage. We, therefore, suggest that in the first sentence where these words occur they be substituted by the words "any dispute which cannot be adjusted by the ordinary processes of diplomacy, and."

In the second sentence of the second paragraph we suggest the admission of a time limit indicated by italics as follows:

"If the dispute has not been settled, a report by the Council shall be published, *within six months after the submission of the dispute*, setting forth with all necessary facts and explanations the recommendation which the council think just and proper for the settlement of the dispute."

This amendment conforms to Article XII. It will be observed that reports by the Executive Council under Articles XII and XV must now be unanimous, a circumstance which should be a great relief to those who have had difficulty in swallowing and digesting the provisions of these articles. It would seem that their distaste to the articles may have really arisen from preconceived prejudices and that consequently they gagged at the preliminary swallowing without allowing them to go down for digestion in a natural manner.

ARTICLE XVI.

Trade pressure is brought against recalcitrant States by Article XVI, and as nothing of real weight can be said against peaceable methods, we shall not prolong this paper by discussion of this article. Just one word, however, in answer to the objection that force may have to be used. If there were no "armed force in the background," to quote the words of President Wilson, the whole program would be a useless waste of time and energy. Ex-President Taft and Ex-President Roosevelt have both been advocates of such force. And they were right. This article again gives the Executive Council only suggestive powers, and there is nothing about it to make anyone "see stars" even though he may imagine himself in the "star

chamber" of the Executive Council, or that he had just burst out of this dreadful room of imaginary horrors.

ARTICLE XVII.

Article XVII deals with "disputes between one State member of the League and another State which is not a member of the League, or between States not members of the League." We suggest that the word "disputes" should be substituted by "*disputes which cannot be adjusted by the ordinary processes of diplomacy*," to make this article conform to Articles XII, XIII, and XV in this regard.

ARTICLE XVIII.

The only criticism against Article XVIII is that it is not made plain how the "League" shall here function. The absence of special provision on this subject raises no special difficulty, and we need not consume space in discussing it.

ARTICLE XIX.

The general phraseology of Article XIX, it must be confessed, is not that ordinarily employed in constitutional papers. But passing this by, as a matter rather of style than of substance, we conceive that just criticisms may be answered by an amendment of one of the clauses so as to read as follows:

"In every case of *accepted* mandate, the mandatory State shall, *so long as it consents to retain the mandate*, render to the League an annual report in reference to the territory committed to its charge."

This amendment will leave every State free to decline a mandate and will likewise give it the right to lay down any accepted mandate whenever its judgment so directs.

ARTICLE XX.

A permanent bureau of labor is created by Article XX, and the attacks upon it are not of sufficient weight to demand a lengthened reply. It is an endeavor only, to secure and maintain fair and humane conditions and is not loaded with any penalties or threats. It is in line with the progressive aspirations of the best men and women, whether among capitalists or laborers. Of course, it is easy for one who considers the whole Constitution "Pandora's box" to imagine countless ills flowing from this as well as every other article. But earnest men and women cannot now be stampeded by scarecrows or spooks.

ARTICLE XXI.

Some just criticism has been leveled at Article XXI, and we think it should be amended as follows:

"The high contracting parties agree that provision shall be made through the instrumentality of the League, to secure and maintain freedom of transit and equitable treatment for the commerce of all States members of the League, *without any interference, however, with the right of each State to determine its own immigration and tariff laws*, having in mind, among other things, special arrangements with regard to the necessities of the regions devastated during the war of 1914-1918."

ARTICLES XXII-XXVI.

So little of real consequence has been said against Articles XXII to XXVI, we shall consume but little space in discussing them. The provision of Article XXIII for the registration of all treaties is excellent, and not liable to any real constitutional objection. As has been suggested, it will be a simple matter to give such dates to the treaties or international engagements as to allow our Congress to act upon them before registration. And it will be observed that the treaties or international engagements are to be made by the States themselves, thus again reserving to them their sovereign rights. The constitution has been criticised because it makes no provision for the withdrawal of any State from the League. It is not customary for constitutions to provide for their self-destruction. And those who desire it in this case are not friends but enemies of the whole program.

CONCLUSION.

The temptation to prolong this review has been repressed in many instances. The writer is fully aware of the inadequate manner in which he has been compelled to conduct the discussion and will not add to the imperfections of the paper by its prolongation. He does not assume the prophetic gift, yet cannot conclude without expressing the conviction that the great body of the American people will support the President in his laudable efforts to guide the world into permanent paths of peace.

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